

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

SCOTT RANSTROM,

Plaintiff, Cross-defendant
and Appellant,

v.

ELDRIDGE CONSTRUCTION, INC.,

Defendant, Cross-
Complainant and Respondent;

KINGS ARCO ARENA, LTD.,

Defendant and Respondent.

C063461

(Super. Ct. No.
07AS02412)

This case arises from purported appeals of two summary judgments involving a subcontract between plaintiff Scott Ranstrom (Ranstrom), doing business as Advanced Roofing Systems (ARS), and defendant and cross-complainant Eldridge Construction, Inc, (ECI).

Defendant Kings ARCO Arena, LTD (Arena), contracted with ECI to perform repairs on the roof of the ARCO sports arena. ECI subcontracted with ARS as a subcontractor to perform a part of the work.

On September 17, 2004, Ranstrom recorded a mechanics' lien against the Arena property for work installing urethane foam at the Arena claiming that he was an employee of ECI. On September 19, 2006, Arena filed a petition in the Sacramento Superior Court to expunge the lien, which was granted.

Notwithstanding, Ranstrom recorded two additional liens against the Arena property in March 2007, referencing the same work that was part of the expunged lien. On May 16, 2007, Ranstrom filed a complaint against ECI and Arena for money owed him. It was amended on November 13, 2007, to assert that Ranstrom was employed by ECI and owed him money, and to foreclose on the mechanics liens filed on March 20, 2007.

Arena and ECI each filed motions for summary judgment. The trial court granted Arena's motion for summary judgment on the complaint in foreclosure and the case against Arena was dismissed with prejudice by an order signed by the judge on May 20, 2008. Notice to Ranstrom of entry of the order was filed on May 28, 2008. The trial court granted ECI's motion for summary judgment on March 3, 2009, but no judgment appears in the record.

On January 29, 2008 ECI filed a cross-complaint against Ranstrom for intentional and negligent interference with prospective economic advantage. The matter went to judicial

arbitration which issued an award in favor of ECI. Ranstrom sought a trial de novo. When Ranstrom failed to answer the complaint ECI obtained his default. A prove-up hearing showed damages in the defense of the liens in the amount of \$82,301.38. A judgment was entered on September 2, 2009.

On November 6, 2009, Ranstrom filed an appeal from the default judgment in the cross-complaint action, purporting to appeal from the order dismissing the case against Arena in the foreclosure action and from the order granting summary judgment to ECI in the foreclosure action.

DISCUSSION

I

Appeal of the Default Judgment Was Abandoned

Ranstrom's opening brief on appeal does not mention, let alone challenge, the default judgment and accordingly neither Arena nor ECI discussed it in their responsive briefs. "[The] failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal." (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.)

Ranstrom's reply brief does summarily claim that both ECI's summary judgment and cross-complaint are wrongly based upon Ranstrom's admissions in ECI's summary judgment proceeding but the default judgment was based upon Ranstrom's failure to file

an answer to ECI's complaint in the superior court and had nothing to do with admissions.

We exercise our discretion to deem abandoned Ranstrom's appeal from the default judgment in the cross-complaint filed by ECI.

II

Ranstrom's Appeal of the Arena Summary Judgment is Untimely

As noted, the trial court granted Arena's motion for summary judgment on the complaint in foreclosure and the case was dismissed with prejudice by an order signed by the judge and filed in the action on May 20, 2008. Notice to Ranstrom of entry of the order was filed on May 28, 2008. However, Ranstrom's notice of appeal from the order of dismissal was not filed until November 6, 2009.

A dismissal in the form of a written order signed by the court and filed in the action shall constitute a judgment and shall be effective for all purposes. (Code Civ. Proc., § 581, subd. (d).) Accordingly, the statute of limitations for an appeal runs from the dismissal of May 28, 2008.

The default rule for the filing of an appeal is 60 days after the party filing the appeal is served a notice of entry of judgment or, failing that, 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104.) Ranstrom's notice of appeal was filed on November 6, 2009, more than 180 days from entry of the Arena judgment. Ranstrom's appeal from the Arena summary judgment was manifestly late.

III

Ranstrom's Appeal of the ECI Summary
Judgment is from a Nonappealable Order

The trial court granted ECI's motion for summary judgment in the foreclosure action on March 3, 2009, but no judgment appears in the record.

An order granting summary judgment without the entry of a judgment dismissing the action is a nonappealable order. (*Modica v. Merin* (1991) 234 Cal.App.3d 1072.) The Court of Appeal for the Third Appellate District has since 1991 refused to enter an order nunc pro tunc dismissing the action.

Accordingly, we shall dismiss the appeal from the order granting ECI's summary judgment in the foreclosure action.

DISPOSITION

The appeals from the order granting ECI's summary judgment in the foreclosure action and from the order dismissing the case against Arena in the foreclosure action are dismissed. The appeal from the default judgment in the action on ECI's cross-complaint is deemed abandoned. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

BLEASE, Acting P. J.

We concur:

SIMS, J.

RAYE, J.